

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3420 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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J P CHAVDA

Versus

DIRECTOR GENERAL OF POLICE

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Appearance:

MR YN OZA for Petitioner  
Ms MANISHA LAVKUMAR, AGP i/b M/S MG DOSHIT & CO  
for Respondent No. 1, 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 06/08/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, who was at the relevant time holding the post of Police Inspector since 4.9.1978, prayed for a writ of mandamus to direct the respondents to give the petitioner deemed date of promotion to the post of Police Inspector from May, 1976 when his immediate junior came to be promoted as Police Inspector and to give the petitioner all consequential benefits

including the further promotions to the higher posts.

2. The learned counsel for the petitioner has contended as under :-

- (i) Promotion from the post of PSI to the post of PI is to be made on the basis of seniority-cum-merit as per the principle laid down by this Court in Special Civil Application No. 437 of 1982. However, the respondents applied the wrong criteria of positive merits and on that basis alone the petitioner was not promoted to the higher post in 1976 when his immediate junior HS Patil came to be promoted.
- (ii) There were no adverse remarks in the petitioners Confidential Reports. In any case no such adverse remarks were communicated to the petitioner for the three years preceding 1976 and, therefore, applying the criteria of seniority-cum-merit, the petitioner was required to be promoted in 1976.
- (iii) On the question of delay in filing this petition, the petitioner has given explanation that the petitioner was making representations to the respondents. Since the same were not accepted, the petitioner filed the petition in 1986.

3. On the other hand, the learned AGP opposed the petition and made the following submissions :-

- (i) The petitioner did not make any representation against his supersession till 1982. The representation made in the year 1982 was rejected in 1983. Hence, the petition filed 10 years after the supersession and in any case three years after the rejection of the representation suffers from gross delay, laches and acquiescence.
- (ii) HS Patil was, of course, junior to the petitioner but he was promoted on 11.9.1978 after the petitioner was promoted as PI on 4.9.1978. Hence, there is no substance in the grievance. The petitioner's immediate junior SR Trivedi was certainly promoted on 20.5.1976. The departmental promotion committee which met in the year 1974 found the petitioner not fit whereas SR Trivedi was found fit and, therefore, the select

list did not include the petitioner's name.

(iii) As far as the criteria for promotion is concerned, the learned AGP as referred to the Rules for promotion to the post of PI under which the criteria of proved merit is to be applied. Reference is also made to the judgment in Special Civil Application No. 1407/83 filed by Smt. P.G. Chaubal, Woman PSI.

(iv) Mere absence of adverse remarks would not mean that the petitioner was positively meritorious for promotion. The petitioner was suspended between 3.6.1970 and 31.12.1970 on the charge of acceptance of illegal gratification, but of course, the misconduct was not proved in the departmental inquiry. It is further stated that in the petitioner's Confidential Reports for the year 1974-75, "fair" grading was communicated to the petitioner.

4. Having heard the learned counsel for the parties, it does appear that the petition was filed in the year 1986 after considerable delay. As per the settled legal position any person feeling aggrieved by his supersession must approach the Court or the authorities as expeditiously as possible. Apart from the fact that the petitioner did not file any petition earlier, even the representation was also made in the year 1982 i.e. after six years. The said representation came to be rejected on 28.2.1983. Even then the petitioner did not file the petition for three years. In view of the fact that after such long lapse of time, the persons who are already promoted are entitled to sit back and consider that their promotion and seniority has crystallized, the Courts are loath to interfere with the orders of promotions of juniors since that would upset the promotions as well seniority of a number of officers who are not even parties to this petition. Even on the basis that the petitioner was promoted as PI in September, 1978, the petitioner came to be promoted as Dy.S.P. in 1994. Directing the respondents to reconsider the petitioner's case for deemed date with effect from 1976 would, therefore, not only unsettle seniority in the cadre of PIs but it would also have repercussions on the question of seniority in the cadre of Dy.SPs.

5. Apart from that, the gravamen of the challenge in the petition is that the wrong criteria of promotion was applied. Reliance is placed on the decision in Special Civil Application No. 437/82 which was rendered after

referring to the general principles for promotion which were in the nature of executive instructions. The learned AGP has relied on the subsequent decision of this Court in Special Civil Application No. 1407 of 1983 which had taken into account the statutory rules for promotion from the post of PSI to the post of PI. Since the subsequent decision is based on the statutory Recruitment Rules, it is obvious that this Court would follow the subsequent decision based on the statutory Recruitment Rules for promotion from the post of PSI to PI which were framed under the proviso to Article 309 of the Constitution.

6. The learned counsel for the petition would still however urge that when the selection board did find the petitioner fit for promotion at its meeting held in August, 1976 as stated in the reply affidavit, there was no reason to deny the petitioner deemed date of August, 1976.

It is true that the selection board did find the petitioner fit for promotion in August, 1976 but before that date the petitioner's junior SR Trivedi was already promoted as PI on 20.5.1976 on the strength of his having been found fit by the selection board in September, 1974. Hence, there was no question of giving the petitioner any deemed date of 20.5.1976. Since no junior to the petitioner is shown to have been promoted between August 1976 and 4.9.1978 when the petitioner came to be promoted as PI, it cannot be said that the respondents had acted arbitrarily in not giving the petitioner any deemed date.

7. In view of the above discussion, there is no merit in this petition and the petition deserves to be dismissed.

The petition is dismissed. Rule is discharged with no order as to costs.

August 6, 1999 (M.S. Shah, J.)

sundar/-